

BOND ORDINANCE 2004-03

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL INDENTURE OF TRUST, WHICH AMENDS AND SUPPLEMENTS THE INDENTURE OF TRUST RELATING TO THE \$9,975,000 AGGREGATE PRINCIPAL AMOUNT OF WARRICK COUNTY, INDIANA ADJUSTABLE RATE POLLUTION CONTROL REVENUE BONDS, 1985 SERIES A (SOUTHERN INDIANA GAS AND ELECTRIC COMPANY PROJECT); AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED INDENTURE OF TRUST, WHICH AMENDS AND RESTATES THE INDENTURE OF TRUST, AS AMENDED BY THE FIRST SUPPLEMENTAL INDENTURE OF TRUST, RELATING TO SAID BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO LOAN AGREEMENT, WHICH AMENDS THE LOAN AGREEMENT RELATING TO SAID BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AS UPPLEMENTAL TAX EXEMPTION CERTIFICATE AND AGREEMENT, WHICH SUPPLEMENTS THE ORIGINAL TAX AGREEMENT RELATING TO SAID BONDS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS OTHER DOCUMENTS AND CERTIFICATES IN CONNECTION WITH THE FOREGOING, AND OTHER RELATED MATTERS PERTAINING TO SAID BONDS.

WHEREAS, Warrick County, Indiana (the "*County*"), a political subdivision of the State of Indiana, acting by and through the Board of Commissioners of the County of Warrick (the "*Board of Commissioners*") by virtue of I.C. Sections 36-7-11.9-1 to 36-7-11.9-10, inclusive, as amended, and I.C. Sections 36-7-12-1 through 36-7-12-38, inclusive, as amended (collectively, the "*Act*") has previously issued its Adjustable Rate Pollution Control Revenue Bonds, 1985 Series A (Southern Indiana Gas and Electric Company Project) in the aggregate principal amount of \$9,975,000 (the "*Bonds*") pursuant to the bond ordinance passed unanimously by the County Council of the County at a regular session on July 11, 1985 and pursuant to an Indenture of Trust, dated as of July 1, 1985 (the "*Original Indenture*"), between the County and The Bank of New York Trust Company, N.A., as successor to The Citizens National Bank of Evansville, as trustee (the "*Trustee*"); and

WHEREAS, in connection with the issuance of the Bonds, the County and Southern Indiana Gas and Electric Company (the "*Company*") entered into a Loan Agreement, dated as of July 1, 1985 (the "*Original Agreement*"); and

WHEREAS, the Company desires and has requested the County to supplement certain provisions of the Original Indenture to allow the Company to select the Bonds to be redeemed in the event of a partial optional redemption of the Bonds and to provide for partial defeasance of the Bonds; and

WHEREAS, the Company desires and has requested the County to amend certain provisions of the Original Indenture and the Original Agreement in order to (i) add additional

methods of determining the interest rate on the Bonds and (ii) secure the Bonds with a bond insurance policy issued by Ambac Assurance Corporation; and

WHEREAS, the County would also like to authorize the execution and delivery of any additional agreements and certificates necessary to preserve the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes; and

WHEREAS, the County is not aware of any default existing under the Original Indenture or the Original Agreement; and

WHEREAS, the First Supplemental Indenture of Trust (the "*Supplemental Indenture*") between the County and the Trustee, the Amended and Restated Indenture of Trust (the "*Amended Indenture*") between the County and the Trustee, the First Amendment to Loan Agreement (the "*First Amendment to Agreement*") between the County and the Company, and the Supplemental Tax Exemption Certificate and Agreement (the "*Supplemental Tax Agreement*") among the County, the Company and the Trustee, each in substantially final form, have been presented to and are before this meeting;

NOW, THEREFORE BE IT ORDAINED BY THE WARRICK COUNTY COUNCIL OF THE COUNTY OF WARRICK, INDIANA AS FOLLOWS:

Section 1. The form, terms and provisions of the Supplemental Indenture in substantially the form submitted to this meeting are hereby approved, and the Board of Commissioners and the County Auditor are hereby authorized and directed to execute and deliver the Supplemental Indenture with such changes therein as shall be approved by such officers, the execution of such document by such officers to constitute conclusive evidence of such approval, and the County Auditor is hereby authorized and directed to affix to the Supplemental Indenture the official corporate seal of the County and to attach a copy of the Supplemental Indenture, in the form submitted to this meeting and approved hereby, in the records of The Warrick County Council of the County of Warrick, Indiana (the "*County Council*") and to certify thereon that the same is the form of Supplemental Indenture so submitted to this County Council and approved by this Ordinance and identified herein as the Supplemental Indenture and to keep such Supplemental Indenture on file.

Section 2. The form, terms and provisions of the Amended Indenture in substantially the form submitted to this meeting are hereby approved, and the Board of Commissioners and the County Auditor are hereby authorized and directed to execute and deliver the Amended Indenture with such changes therein as shall be approved by such officers, the execution of such document by such officers to constitute conclusive evidence of such approval, and the County Auditor is hereby authorized and directed to affix to the Amended Indenture the official corporate seal of the County and to attach a copy of the Amended Indenture, in the form submitted to this meeting and approved hereby, in the records of this County Council and to certify thereon that the same is the form of Amended Indenture so submitted to this County Council and approved by this Ordinance and identified herein as the Amended Indenture and to keep such Amended Indenture on file.

Section 3. The Board of Commissioners and the County Auditor are hereby authorized and directed to execute, attest and deliver new Bonds in substantially the form set forth in the Amended Indenture to The Bank of New York Trust Company, N.A. (the "*Bond Registrar*") in exchange for the Bonds currently held by the Bondholders.

Section 4. The form, terms and provisions of the First Amendment to Agreement in substantially the form submitted to this meeting are hereby approved, and the Board of Commissioners and the County Auditor are hereby authorized and directed to execute and deliver the First Amendment to Agreement with such changes therein as shall be approved by such officers, the execution of such

document by such officers to constitute conclusive evidence of such approval, and the County Auditor is hereby authorized and directed to affix to the First Amendment to Agreement the official corporate seal of the County and to attach a copy of the First Amendment to Agreement, in the form submitted to this meeting and approved hereby, in the records of this County Council and to certify thereon that the same is the form of First Amendment to Agreement so submitted to this County Council and approved by this Ordinance and identified herein as the First Amendment to Agreement and to keep such First Amendment to Agreement on file.

Section 5. The form, terms and provisions of the Supplemental Tax Agreement in substantially the form submitted to this meeting are hereby approved, and the Board of Commissioners and the County Auditor are hereby authorized and directed to execute and deliver the Supplemental Tax Agreement, together with an IRS Form 8038, with such changes therein as shall be approved by such officers, the execution of such document by such officers to constitute conclusive evidence of such approval, and the County Auditor is hereby authorized and directed to affix to the Supplemental Tax Agreement the official corporate seal of the County and to attach a copy of the Supplemental Tax Agreement, in the form submitted to this meeting and approved hereby, in the records of this County Council and to certify thereon that the same is the form of Supplemental Tax Agreement so submitted to this County Council and approved by this Ordinance and identified herein as the Supplemental Tax Agreement and to keep such Supplemental Tax Agreement on file.

Section 6. The Board of Commissioners and the County Auditor are hereby empowered and directed to execute, acknowledge and deliver all other documents and other instruments which may be required from time to time under the terms of the Supplemental Indenture, the Amended Indenture, the First Amendment to Agreement, the Supplemental Tax Agreement and this Ordinance.

Section 7. The execution and delivery of the Supplemental Indenture, the Amended Indenture and the First Amendment to Agreement by the Board of Commissioners and the County Auditor as authorized in Section I, Section 2 and Section 4 above are expressly conditioned upon the following:

- I. Consent to the Supplemental Indenture, the Amended Indenture and the First Amendment to Agreement must be obtained from all required persons; and
2. Bond Counsel must opine that such supplements and amendments are authorized by and in accordance with the Original Indenture and will not have an adverse effect on the federal income tax exemption of interest paid on the Bonds.

Section 8. The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall be for any reason declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 9. This Ordinance shall take effect as of the date adopted and executed by this County Council and all ordinances in conflict herewith are repealed to the extent of the conflict.

EXCERPT FROM THE MINUTES OF THE MEETING OF THE
WARRICK COUNTY COUNCIL OF WARRICK COUNTY, INDIANA
ON AUGUST 5, 2004

The Warrick County Council of Warrick County, Indiana met in regular session at 6:00 o'clock P.M., August 5, 2004, Indiana time, at the Warrick County Courthouse in Boonville, Indiana. The meeting was called to order and there were present at said meeting the following members of The Warrick County Council:

Absent:

The meeting having been called to order, the President declared a quorum was present.

(Other Business)

Councilman Joe Schitter presented to The Warrick County Council the following Ordinance:

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL INDENTURE OF TRUST, WHICH AMENDS AND SUPPLEMENTS THE INDENTURE OF TRUST RELATING TO THE \$9,975,000 AGGREGATE PRINCIPAL AMOUNT OF WARRICK COUNTY, INDIANA ADJUSTABLE RATE POLLUTION CONTROL REVENUE BONDS, 1985 SERIES A (SOUTHERN INDIANA GAS AND ELECTRIC COMPANY PROJECT); AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED INDENTURE OF TRUST, WHICH AMENDS AND RESTATES THE INDENTURE OF TRUST, AS AMENDED BY THE FIRST SUPPLEMENTAL INDENTURE OF TRUST, RELATING TO THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO LOAN AGREEMENT, WHICH AMENDS THE LOAN AGREEMENT RELATING TO SAID BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TAX EXEMPTION CERTIFICATE AND AGREEMENT, WHICH SUPPLEMENTS THE ORIGINAL TAX AGREEMENT RELATING TO SAID BONDS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS OTHER DOCUMENTS AND CERTIFICATES IN CONNECTION WITH THE FOREGOING, AND OTHER RELATED MATTERS PERTAINING TO SAID BONDS.

Councilman Ray McIntyre moved that the Ordinance be number 2004-03, and that the Ordinance be adopted. The motion was seconded by Councilman Joe Schitter. After discussion and upon the call of the roll, said Ordinance was adopted by the following vote:

AYE: 7

NAY: 0

ABSTAINED: _____

(Other Business)

Upon motion and vote the meeting adjourned.

Richard Kixmiller, County Auditor

APPROVED:

Gary Meyer, D.D.S., President
Warrick County Council

I, Richard Kixmiller, being first duly sworn do hereby depose and certify that I am the duly elected qualified and acting Auditor of Warrick County, Indiana and that as such I have in my possession, or have access to, the complete records of the members of the County Council, that I have carefully compared the transcript hereto attached with the aforesaid records; and that said transcript hereto attached is a true, correct and complete copy of all of the records showing action taken by the members of the County Council regarding adopting an ordinance relating to the amending and supplementing of the original Indenture of Trust, dated as of July 1, 1985, between Warrick County, Indiana and The Bank of New York Trust Company, N.A., as successor to The Citizens National Bank of Evansville, the amending and restating of said original Indenture of Trust, as supplemented, the execution of the First Amendment to Loan Agreement, dated as of August 1, 2004, between Warrick County, Indiana and Southern Indiana Gas and Electric Company, and the execution of the Supplemental Tax Exemption Certificate and Agreement, dated as of the date of Closing, among Warrick County, Indiana, Southern Indiana Gas and Electric Company and The Bank of New York Trust Company, N.A.

Witness my hand this 6th day of August, 2004.

Richard Kixmiller, County Auditor

STATE OF INDIANA:

COUNTY OF WARRICK:

Subscribed and sworn to before me, a Notary Public, this ____ day of August, 2004.

My Commission Expires:

Notary Public

Resident of Warrick County, Indiana

Printed Name